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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREW CARL PATTERSON,

Defendant and Appellant.

F055785

(Super. Ct. No. 08CM1236)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Lynn C. Atkinson, Judge.

Susan Pochter Stone, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Julie A. Hokans and J. Robert Jibson, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Cornell, J., and Kane, J.

Pursuant to a plea agreement, appellant Andrew Carl Patterson pled guilty to possession of cocaine for purposes of sale (Health & Saf. Code, § 11351.5) and admitted allegations that he had suffered two “strikes.”¹ The court denied appellant’s request that the court strike one of appellant’s strike convictions pursuant to section 1385² and, pursuant to the three strikes law, imposed a prison sentence of 25 years to life. On appeal, appellant’s sole contention is that the court abused its discretion in denying appellant’s *Romero* motion. We will affirm.

FACTUAL AND PROCEDURAL BACKGROUND³

The Instant Offense

On April 19, 2008, a police officer stopped a vehicle in which appellant was riding as a passenger. After complying with the officer’s request that he get out of the car, appellant consented to a search of his pockets. During that search, the officer found, in a brown paper bag in appellant’s right rear pants’ pocket, three bindles, each of which contained a “white rock-like substance.” When the officer asked what the substance was, appellant responded, “crack.” Appellant admitted to the officer he used cocaine. The substance in the bindles was later tested and found to contain cocaine. “The cocaine was weighed and found to be 14.4 grams including packaging.”

¹ We use the terms “strike,” in its noun form, and “strike conviction” as synonyms for “prior felony conviction” within the meaning of the “three strikes” law (Pen. Code, §§ 667, subds. (b)-(i); 1170.12), i.e., a prior felony conviction or juvenile adjudication that subjects a defendant to the increased punishment specified in the three strikes law. All further statutory references are to the Penal Code.

² A criminal defendant’s request that a court strike one or more strike convictions pursuant to section 1385 is commonly called a *Romero* motion. (See *People v. Superior Court (Romero)* (1996) 13 Cal.3d 497 (*Romero*).)

³ Our summaries of the facts of the instant offense and appellant’s criminal history are taken from the report of the probation officer.

Appellant's Criminal History

Appellant was adjudged a ward of the juvenile court in 1979 based on an adjudication of petty theft, and readjudged a ward in 1981 based on an adjudication of forcible rape.

Between 1983 and 1994, appellant suffered 17 misdemeanor convictions: four for driving under the influence, four for driving with a suspended license, three for being under the influence of a controlled substance, three for simple battery, and single convictions of obstructing a peace officer, spousal battery, and battery with infliction of serious bodily injury. During this period, appellant was placed on probation six times, his probation was revoked once and he was sentenced to county jail on multiple occasions.

Between 1984 and 1995, appellant suffered five felony convictions, for receiving stolen property, in 1984; possession of a controlled substance, in 1990 and again in 1992; and two counts of robbery in 1995. On each of these convictions, he was sentenced to prison, released on parole, and eventually discharged. On each of the 1990 and 1992 convictions, he was returned to custody on multiple occasions after being paroled.

Other Background

Appellant told the probation officer the following. He attended high school “until the 11th grade,” and “receive[d] his diploma from Hanford Adult School in 1983.” He was unemployed at the time of his arrest; his last employment was as a “floor associate” with Wal-Mart, from 2000 to 2004. He “lost this job due to drug usage,” and since then had been “working odd jobs, earning \$150 to \$200 per month” He was “a drug addict,” he used drugs “daily,” he was 43 years of age; he began “heavily” using “crack” when he was 38 or 39 years of age, and “all of the money he earned was used to support his drug habit.”

The probation officer stated that appellant “appeared remorseful for his actions.” The officer also recommended that the court find as a circumstance in mitigation that appellant “voluntarily acknowledged wrongdoing prior to arrest or at an early stage of the criminal process.”

DISCUSSION

As indicated above, appellant contends the court abused its discretion in denying his *Romero* motion.

Governing Principles

Section 1385 provides, in relevant part, “The judge or magistrate may, ... in furtherance of justice, order an action to be dismissed.” (§ 1385, subd. (a).) In *Romero*, *supra*, 13 Cal.4th at pp. 529-530, the California Supreme Court concluded that section 1385, subdivision (a) “permit[s] a court acting on its own motion to strike prior felony conviction allegations in cases brought under the Three Strikes law.” But although “[a] defendant has no right to make a motion, and the trial court has no obligation to make a ruling, under section 1385,” a defendant “does have the right to ‘invite the court to exercise its power by an application to strike a count or allegation of an accusatory pleading, and the court must consider evidence offered by the defendant in support of his assertion that the dismissal would be in furtherance of justice.’” (*People v. Carmony* (2004) 33 Cal.4th 367, 375 (*Carmony*.)

In *People v. Williams* (1998) 17 Cal.4th 148, the California Supreme Court set forth the factors relevant to the determination of whether to strike a strike: “[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law, on its own motion, ‘in furtherance of justice’ pursuant to [section 1385, subd. (a)], or in reviewing such a ruling, the court in question must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background,

character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*Id.* at p. 161.)

A superior court's determination not to strike a strike is reviewable for abuse of discretion. (*Carmony, supra*, 33 Cal.4th at p. 376.) “In [conducting this review], we are guided by two fundamental precepts. First, “[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve the legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.” [Citation.] Second, a ““decision will not be reversed merely because reasonable people might disagree. ‘An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.’” [Citation.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Id.* at pp. 376-377.)

Thus, “[i]t is not enough to show that reasonable people might disagree about whether to strike one or more’ prior conviction allegations.... Because the circumstances must be ‘extraordinary ... by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack’ [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary. Of course, in such an extraordinary case--where the relevant factors described in *Williams, supra*, 17 Cal.4th [at p. 161], manifestly support the striking of a prior conviction and no reasonable minds could differ--the failure to strike would constitute an abuse of discretion.” (*Carmony, supra*, 33 Cal.4th at p. 378.)

Contentions and Analysis

Appellant argues the court abused its discretion in refusing to strike one of his strike convictions because, he asserts: the fact that appellant's conviction in the instant case in 2008 was his first since 1995 demonstrates he has "markedly matured" and "effected a break from his prior propensity [to commit crimes]"; the court "failed to consider the remoteness of the robbery strikes priors as a mitigating factor"; appellant made an "early admission of error in the current offense"; the instant offense did not involve violence; various factors support the inference that he possessed cocaine for personal use only, thereby rendering his plea an "ambiguous testament of his possession for [purposes of] sale"; and given that people tend to commit fewer crimes as they age, and even if appellant is not sentenced under the three strikes law, he likely will be at least 51 years old before he is released, a 25-years-to-life sentence under the three strikes law is excessive and "does not rationally serve the interests of justice or society."

Appellant's attempt to recast the instant offense as the less serious crime of simple possession is without merit. There was nothing "ambiguous" about appellant's plea of guilty to possession of cocaine for purposes of sale. A guilty plea "constitute[s] 'a judicial admission of *every element* of the offense charged[.]'" (*People v. Alfaro* (1986) 42 Cal.3d 627, 636, overruled on another ground in *People v. Guerrero* (1988) 44 Cal.3d 343, italics added.)

Appellant's claim that the court failed to consider the remoteness of appellant's most recent prior convictions is also meritless. Nothing in the record suggests the court was unaware that appellant suffered his strike convictions in 1995.

We acknowledge that appellant's most recent prior convictions occurred 13 years before sentencing, the instant offense did not involve violence and appellant admitted guilt at an acknowledged wrongdoing prior to arrest, and we assume for the sake of argument, as appellant asserts, that "[s]tudies show criminal careers taper off as people

age.” These factors notwithstanding, however, the instant case is not the extraordinary one in which departure from the three strikes law sentencing scheme is compelled. The record shows the following: After suffering two adjudications as a juvenile, one of which was for forcible rape, appellant, as an adult, in the space of less than 12 years beginning in 1983, suffered convictions of five felonies and 17 misdemeanors; all of appellant’s felony convictions resulted in prison sentences; two of his felony convictions were serious enough to qualify as strikes; appellant has received multiple grants of both probation and parole; and at the time he committed the instant offense, he was addicted to drugs, he was only marginally employed and he was spending most, if not all, of his earnings to support his drug habit.

Thus, appellant has demonstrated an inability to refrain from committing crimes despite past sanctions and attempts to rehabilitate through the juvenile justice system as well as adult probation and parole. Moreover, appellant’s criminal history, the instant offense and his history of marginal employment and drug addiction support the conclusion that his prospects are not such that he should be deemed “outside the ... spirit [of the three strikes law], in whole or in part” (*People v. Williams, supra*, 17 Cal.4th at p. 161.) Although the record may indicate that this matter is within the range of cases as to which the trial court had discretion under section 1385 to strike one of appellant’s strikes, nothing in the record compels such an exercise of that discretion, and it was not irrational for the court to refuse to treat appellant as if he had not previously suffered two strikes. Accordingly, the court did not abuse its discretion in denying appellant’s *Romero* motion.

DISPOSITION

The judgment is affirmed.